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Ontario. Consolidated Hearings Act, 1981.

CH-90-08

DECISION AND REASONS FOR DECISION...IN THE MATTER OF AN
APPEAL BY MOUNTAIN INDUSTRIAL PARKS... 1991.

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The Joint Board THE CONSOLIDATED HEARINGS ACT, 1981

CH-90-08

DECISION AND REASONS FOR DECISION

IN THE MATTER OF Sections 2 and 3 of the *Consolidated Hearings Act*, S.O. 1981, as amended;

IN THE MATTER OF Section 22 of the *Planning Act*, S.O. 1983, as amended;

IN THE MATTER OF Section 25 of the *Niagara Escarpment Planning and Development Act*, R.S.O. 1980;

IN THE MATTER OF an appeal by Mountainview Industrial Parks from a decision of the Niagara Escarpment Commission, whereby the Commission refused an application numbered W/C/89-90/243 for an increase to the list of permitted uses within an existing commercial plaza located on lot 4, concession 3, in the Town of Flamborough, Regional Municipality of Hamilton-Wentworth.

BEFORE:	R.D.M. Owen	-	Chairman
	L.O. Gertler, FCIP	-	Member

DATED at TORONTO this 21ST DAY of MAY, 1991.

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IN THE MATTER OF Sections 2 and 3 of the *Consolidated Hearings Act*, S.O. 1981, as amended;

- and -

IN THE MATTER OF Section 22 of the *Planning Act*, S.O. 1983, as amended;

- and -

IN THE MATTER OF a referral to this Board by The Regional Municipality of Hamilton-Wentworth on a request by Mountainview Industrial Parks Limited for consideration of a proposed amendment to the Official Plan for the Town of Flamborough to redesignate from "Highway Commercial-Urban" to "Urban Commercial", the lands located on the north side of Highway No. 5 and east of Burke Street, being Part of Lot 4, Concession 3, Town of Flamborough, to permit an expanded range of commercial uses, Region's File No. 25 OP FL R2, O.M.B. File J 900007;

- and -

IN THE MATTER OF Section 25 of the *Niagara Escarpment Planning and Development Act*, R.S.O. 1980;

- and -

IN THE MATTER OF an appeal by Mountainview Industrial Parks from a decision of the Niagara Escarpment Commission, whereby the Commission refused an application numbered W/C/89-90/243 for an increase to the list of permitted uses within an existing commercial plaza located on lot 4, concession 3, in the Town of Flamborough, Regional Municipality of Hamilton-Wentworth.

BEFORE:	R.D.M. Owen	-	Chairman
	L.O. Gertler, FCIP	-	Member

COUNSEL:

Mark Noskiewicz - for Mountainview Industrial Parks Limited
Brent Foreman - for Town of Flamborough

WITNESSES:

Martin Kilian - for The Niagara Escarpment Commission
Alan Rutherford - for himself
Richard F. Brady - for Mountainview Industrial Parks Limited
Garry M. Stamm - for Mountainview Industrial Parks Limited
Peter J. De Iulio - for the Town of Flamborough

REASONS FOR DECISION

The Setting: Background, Location, Issues

This hearing of the Joint Board is concerned with the permitted uses of an existing commercial plaza on Dundas Street (Highway No.5) in the Waterdown area of the Town of Flamborough. This plaza is part of an "Urban Area" designation in the Niagara Escarpment Plan. Land use jurisdiction for the subject site is exercised by the Niagara Escarpment Commission (N.E.C.), in accordance with Section 13 of the *Niagara Escarpment Planning and Development Act*, R.S.O. 1980.

The subject property is a three-unit one-storey structure of 507.4 sq.m. on a .3 ha lot with about 46 metres fronting on the north side of Dundas Street, approximately .8 km east of a CP railway line that crosses Highway No.5.

The main physical features of the area (Fig.1) surrounding the subject site are the following:

- | | |
|--|---|
| Immediately to the west | - a motel, located at the corner of Dundas and an intersecting residential street (Burke St.) |
| Immediately to the east | - an Ontario Hydro corridor, 100 feet wide, containing transmission lines on power pylons |
| To the north and along Dundas Street, to the east and west (mainly) of the subject property | - a low density, single family residential area of approximately 1500 to 2000 people |
| To the south | - an agricultural area, designated "Escarpment Rural" in the Niagara Escarpment Plan (N.E.P.) |

The N.E.C. Development Permit for the plaza was authorized on August 18, 1986 in a Notice of Decision of the Minister of Municipal Affairs, confirming an opinion of the Niagara Escarpment Hearing Officer which upheld a decision of the N.E.C. The decision of the Commission (N.E.C. File No. W/C/85-86/338) was to grant permission for a development, subject to site development and other conditions, which would be restricted to the uses permitted by the Highway Commercial "HC" Zone of the then Zoning By-Law (No. 75-65-EF-Z) of the Town of Flamborough, with the exception of hotels and places of entertainment or recreation. The Development Permit was issued on August 7, 1988.

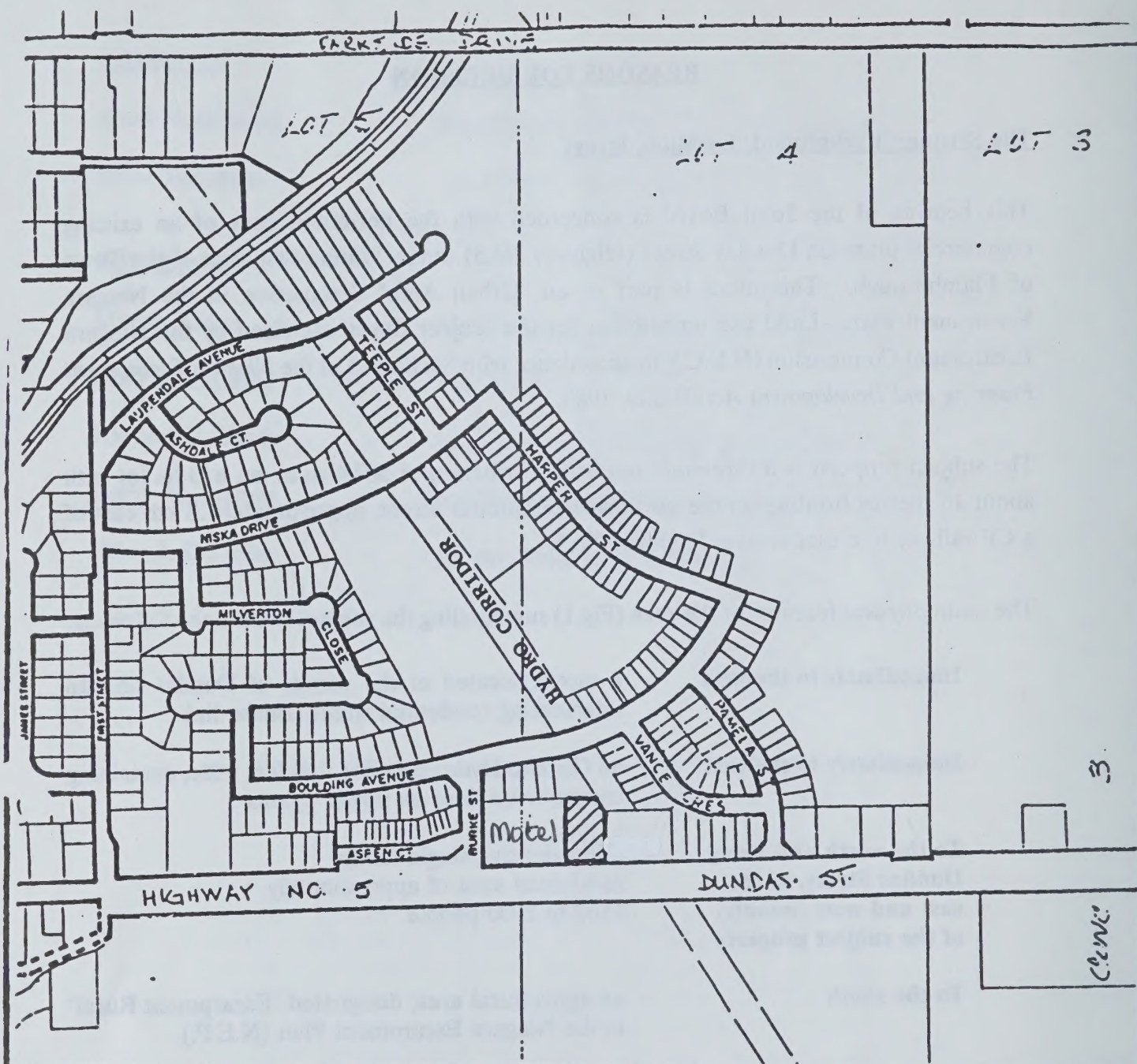


FIGURE 1
TOWN OF FLAMBOROUGH
PART OF LOT 4, CONCESSION 3
FORMERLY IN THE TOWNSHIP OF
EAST FLAMBOROUGH, NOW IN THE
TOWN OF FLAMBOROUGH



SUBJECT PROPERTY

"Highway Commercial" uses included "antique and gift shops, automotive accessory stores, garden centres, motor hotels, permanent fruit and vegetable stand or produce market, restaurant or refreshment stand and similar uses." (Transcript, evidence of Richard F. Brady, M.C.I.P., Proctor and Redfern, p.51). The Zoning By-Law then in effect contained provisions which limited the density, bulk and height of buildings: maximum lot coverage was 33+ % and maximum height was 25 feet (Exhibit 12, Appendix A). At the date of this hearing (February 26, 1991) only the central unit of the plaza building was occupied, and that was with a donut shop.

This matter is now before the Board because of:

1. a request of Mountainview Industrial Parks to the Regional Municipality of Hamilton-Wentworth to refer to the OMB (under Section 22 of the *Planning Act*, S.O. 1983, as amended) a proposed amendment of the Official Plan of the Town of Flamborough from Highway Commercial-Urban to Urban Commercial, and;
2. an appeal by Mountainview Industrial Parks from a decision of the N.E.C. to deny an increase in the list of permitted uses within the existing commercial plaza on the subject site.

The Official Plan referral was made on July 23, 1990.

The application to the N.E.C. was in October, 1989. The N.E.C. decision, denying the application, was given on February 9, 1990.

Mountainview filed its appeal to the Minister of Municipal Affairs on February 23, 1990.

At the request of the appellant the Consolidated Hearing was conducted pursuant to Section 2 and 3 of the *Consolidated Hearings Act*, S.O. 1981, as amended.

At the start of the hearing counsel for the appellant, Mr. Mark Noskiewicz, made it known that Mountainview was not seeking the entire range of permitted uses within the "Urban Commercial" designation, but a restricted list of four uses: convenience retail, restaurants, personal service, and office. These were described as uses suitable for serving the needs of a residential neighbourhood. This was new information for the participants present: Mr. Brent Foreman, counsel for the Town of Flamborough; Mr. Martin Kilian, an N.E.C. planner; and Mr. Alan Rutherford, a local resident representing the views of four residents on Vance Crescent, which is on the east side of the Ontario Hydro corridor. Accordingly,

the Board encouraged consultation amongst the participants with a view to scoping and focusing the issues in the light of the new information. A recess for that purpose was held early in the hearing.

The result of this consultation was, as follows:

1. Three of the four uses: convenience retail, restaurant, and office were acceptable to the Town, provided they were included within a Highway Commercial-Urban Zone, and provided need as expressed in market demand could be demonstrated.
2. The fourth use, personal service, remained in contention.
3. The representative of the N.E.C. indicated that the Commission would be guided by the preferences of the Town as the permitted uses within the "Urban Area" designation of the N.E.P. were those sanctioned by the prevailing municipal Official Plan.
4. Mr. Rutherford endorsed the restaurant use, already in place, and offices, and was non-committal on the other activities. As the hearing proceeded it became clear that the main concern of his group was with the site plan and impact issues.

On this basis, three issues before the hearing were identified:

- i) market demand - demonstration of demand for neighbourhood-oriented commercial uses at the subject site, with particular attention to the four uses in question;
- ii) an evaluation of the appropriateness of "personal service" uses at the subject site, and;
- iii) effectiveness of site plan and development features, particularly in relation to compatibility with the adjacent residential neighbourhood.

Due to the Official Plan amendment sought by Mountainview, namely from Highway Commercial-Urban to Urban Commercial, two other issues remained to be addressed:

- iv) planning principles - the conceptual pros and cons of the proposed change in designation, and;
- v) the consistency of the proposed uses with the other provisions, such as development criteria, of the Official Plan, and with the retail structure authorized by the Plan.

With regard to the relationship of the proposed amendment and uses to the Niagara Escarpment Plan, the objective of the "Urban Area" provides the key guideline, namely:

"To minimize the impact and further encroachment of urban growth on the Escarpment environment." (Exhibit 14, p.17)

This urban area in Flamborough is a link between Escarpment Rural and Escarpment Protection Areas on the West, including Borer's Falls and Sydenham Creek, and Escarpment Rural and Escarpment Natural designations on the East, which include part of the Medad Valley. In this linking function, the "Urban Area" in Waterdown serves the objective of the designation, but otherwise the proposals in question do not raise any intrinsic environmental issues associated with the Niagara Escarpment Plan.

The Proposed Official Plan Amendment and Development Permit: The Mountainview Case

The argument made by Mountainview related to (i) planning principles, (ii) the Official Plan of the Town of Flamborough and (iii) market demand. In addressing these matters the merits of the contentious use "personal service" were also considered.

With regard to planning principles, the combined evidence of the planner, Mr. Richard Brady, and the economic researcher, Mr. Garry Stamm, may be synoptically stated in four points:

1. The neighbourhood area adjacent to the subject site, containing 25 to 30 per cent of the existing and planned population of the Town is not presently served by neighbourhood-oriented commercial uses. Consequently it would be appropriate to expand the list of uses from the narrow scope of Highway Commercial to the broader Urban Commercial designation, which encompasses neighbourhood-oriented commercial uses.
2. Highway No.5 (Dundas Street), particularly since the opening of Highway 403, has gradually become a regional artery serving, for example, a heavy flow of commuter traffic rather than the "travelling public" in a broad sense which requires the typical highway commercial services.
3. "Personal services" are compatible with the other neighbourhood-oriented commercial uses, since such services (such as barber, hairdresser, beautician, shoe repair establishment) are permitted uses in the Neighbourhood Commercial Zone of the Flamborough Zoning By-Law; and are compatible with residential areas because,

because, as stated in the testimony of the planner for the Town of Flamborough, Mr. Peter De Iulio, such uses are not heavy generators of vehicular traffic.

4. The Town of Flamborough has no plans to establish other Neighbourhood Commercial zones in the eastern residential sector of Waterdown; and consequently the subject site offers the last and best opportunity to establish neighbourhood commercial uses for the residential area east of the CPR tracks.

With regard to the Official Plan aspects, the Mountainview evidence and argument suggests:

1. that in the planning system of the Town of Flamborough, neighbourhood commercial zones (as defined in the new Zoning By-Law [No. 90-145-Z]) are permitted only in the Urban Commercial designation of the Town's Official Plan (Exhibit 10);
2. that the subject site meets all of the development criteria of the Official Plan (Part Two, A.3.2.9.), namely:
 - i) use compatibility with the surrounding area;
 - ii) physical suitability;
 - iii) adequacy of the street system;
 - iv) convenience and accessibility, for both vehicular and pedestrian traffic, and;
 - v) adequacy of utilities and Municipal services.

Amongst the positive factors cited in support of the above were:

1. the provisions of the Site Plan Agreement with the Town (June 1, 1988), with respect to siting of buildings, access, off-street parking, landscaping, garbage, maintenance, building density (gross floor area), signage, and lighting;
2. the location of the subject property at the intersection of Dundas Street and the Ontario Hydro corridor which provides, inadvertently, a 100-foot buffer on the east side of the project;
3. the inherently small scale of the future office occupancy, limited by the existing building which contains two still unoccupied 1600 sq. ft. units, and by the gross floor area limit (5461.6 sq. ft.) of the Site Plan Agreement;
4. the availability of two options to improve the access of pedestrians (who according to the estimate of Mr. Stamm will constitute about 10% of total traffic), namely the provision of a sidewalk on the north side of Highway 5, as part of the scheduled widening of the highway, from Pamela Street immediately east of the subject site, to the core Business District; and/or the installation of a walkway, through an agreement with Ontario Hydro, in the Hydro corridor, and;

5. the non-competitive nature of local neighbourhood-oriented commercial uses vis-a-vis the other commercial designations in the Official Plan.

The evidence on market demand, provided by Mr. Garry Stamm, sought to establish the following:

1. on the basis of only the 1991 population of the consumer zones east of the CPR tracks, a neighbourhood-oriented commercial space of 8700 sq. ft. could be supported, that is more than 3000 sq. ft. in excess of the present structure;
2. the demand for "personal service" activities ("convenience service") would support 2411 square feet of commercial space in 1991, and;
3. on the basis of an estimated population expansion (1991 to 1996) from 2163 to 3767 (74%) in the relevant consumer zones, i.e. the eastern residential area, an additional 7000 sq. ft. could be supported.

These estimates were based on a set of assumptions about levels of personal disposable income (PDI), per capita expenditure levels for Department Store Type Merchandise (DSTM) and for Food and Convenience Type Merchandise (FCTM), sales revenue/floor area ratios, and market shares of the subject commercial facilities.

It was acknowledged that estimates of future population and commercial expansion depended on the fulfilment of plans for extending the Regional trunk sewer system to service the area of Waterdown east of Highway No. 6.

The Stamm estimates were not challenged by the Town or other participants.

Policy And Site Development Concerns

The market studies were accepted by the planner of the Town of Flamborough, Mr. Peter De Iulio, as providing a demonstration of need for the four proposed uses. The policy concerns that remained were related to (i) Mountainview's request for an Urban Commercial designation, albeit restricted to four specific uses, and (ii) the inclusion of "personal services" amongst the permitted uses.

The first concern derived partly from a difference of view on the commercial structure of the Town. The Town's policy, as explained by the planner, was based on the premise that

Highway Commercial-Urban was the appropriate designation for a route, Highway No. 5/Dundas Street, which carried a heavy volume of traffic, particularly during morning and evening peak hours. This assertion about heavy traffic was accepted by all parties, notwithstanding that no data on traffic volumes, existing or trends, was provided. There was also a concern with the potentially disrupting effect of an Urban Commercial designation on the commercial structure of the Town. The broad orientation of the Official Plan is indicated by the Commercial objective for the Business District, namely:

"To establish a Business District within the Urban Area as the main focus for commercial activity and to protect and enhance the importance of that area by encouraging the development of a wide range of consumer and ancillary uses." (Ex. 10, p.11)

While the Town acknowledges that a limited set of commercially-oriented neighbourhood uses on the subject site would not upset the commercial structure, and would not jeopardize the centrality of the Business District, the Town's planner, Mr. De Iulio, expressed concern that the Urban Commercial designation with its much broader list of permitted uses than the Highway Commercial Area would constitute a potential threat (Transcript, p.256). The objection to "personal services" was related to this. What was of concern was the "crowbar" effect of that use. The worry was not so much with the intrinsic features and impacts of the specific use, but with the possibility, particularly if associated with an Urban Commercial designation, that it might be used in the future as a lever to obtain other, if not the full range of Urban Commercial uses.

The site development issues were brought to the attention of the Board mainly through the testimony of the local resident, Mr. Alan Rutherford. The major concerns were:

Pedestrian Access

Presently, there is no sidewalk on the north side of Dundas Street from the closest access streets, Burke and First to the west, and Pamela to the east. Informal and unauthorized use of the Hydro corridor is made for access to the plaza. In evidence presented to the Board by the planners, Brady and De Iulio, a decided preference was expressed for the corridor as a means of pedestrian access (compared to a sidewalk on the north side of busy Dundas Street). As Mr. Brady said in responding to a question by Mr. Rutherford about the adequacy of a corridor walkway:

"I think it could be upgraded and that would be quite desirable from a community point of view and also from the point of view of the plaza." (Transcript, pp. 115, 116)

Questions related to obtaining a lease from Ontario Hydro produced the suggestion that there were precedents for such arrangements. Mr. Brady explained: "A five-year annually renewable lease" is "a common vehicle by which Hydro deals with its properties" (Transcript, p.78).

Landscaping

The main concern is with a row of trees along the eastern property line which are a requirement of the Site Plan Agreement. Evidence was provided by Mr. Rutherford and confirmed by the Town that the asphalt paving extends to a curb within a few feet of the eastern property line; and that the trees were planted instead just outside the fence on the Hydro right-of-way.

While the "letter" of the Agreement was not carried out, Mr. Rutherford expressed the view that the trees outside the fence may be more effective, providing "a very good barrier" (Transcript, p.164); and the Town had no objection to the location of the trees. The issue remained of securing the formal consent of Ontario Hydro to the use of the right-of-way for that purpose. Maintenance of the trees in good condition was also a concern.

Lighting

On this issue, Mr. Rutherford, complaining of the "invasive" effect of the plaza lighting, gave the following evidence:

". . . lighting from the plaza, especially on the east side of the building . . . has been an ongoing source of problem for us. When it is on . . . I can sit in my kitchen area there [across the 100-foot right-of-way on its eastern boundary] . . and read a newspaper by that light , it's that invasive. At present it is turned off, but only through our intervention with our planning department. Mountainview has promised to make a shield to direct the light down, but as yet that has not happened."

On this feature the Site Plan Agreement states:

"All parking shall be provided with suitable lighting facilities which shall be so installed and maintained as to ensure that the light is deflected away from all streets, highways, Residential Zones or lots used for residential purposes."
(Exhibit 21, List of Conditions #9)

Mr. Noskiewicz, counsel for Mountainview, confirmed this commitment.

Garbage

Mr. Rutherford testified with regard to the garbage dumpster at the northeastern corner of the site, as follows:

".. that a cover is supposed to be put over this but as of today no cover exists . . . often the lid is left up and when it's full it's quite visible that there is garbage there." (Transcript, pp. 158, 166)

On this feature, the Site Plan agreement states:

"A garbage area shall be provided . . and shall be completely enclosed with a roof." (Condition # 9)

Again, Mr. Noskiewicz was able to make a commitment to the Site Plan Agreement.

These policy and site development concerns will be addressed in the Board's decision.

Evaluation and Conclusion

With regard to the requirements of the Niagara Escarpment Plan, Mr. Martin Kilian, the planner representing the Niagara Escarpment Commission stated:

"the new uses that are being asked for are not seen to contravene or conflict with the objective of the urban area designation . . ." (Transcript, p.143)

That objective cited in the first section above stresses the importance of preventing further urban encroachment on the Escarpment environment.

Mr. Kilian also confirmed that the Official Plan of the Town of Flamborough is not in conflict with the Niagara Escarpment Plan, although "the conformity exercise with the Niagara Escarpment Plan" (under Section 13 [2], *Niagara Escarpment Planning and Development Act*) has not been completed.

Accordingly, it remains for the Board to resolve the remaining land use policy and site development issues, having regard to the public interest, plans and policies in effect, and the facts presented as evidence.

With regard to the one use in contention, "personal service", the Board is of the view that it is an acceptable use, as long as it does not subsequently become a pretext for the expansion of the list of permitted commercial uses. To prevent that eventuality the Board favours what was referred to in the hearing as the "Highway Commercial-Urban plus" solution to the "Urban Commercial minus" solution. The existing designation will be maintained and the four specific uses: convenience retail, restaurant, personal service and office will be identified as the only uses permitted in the "Site Specific Area".

In acceding to Mountainview's request for specific commercial uses, the Board is responding to the first Commercial objective of the Town's Official Plan, namely

"To promote planned development of COMMERCIAL uses consistent with the needs of the Town's residents." (Exhibit 10,A.3,p.11)

By maintaining the Highway Commercial-Urban designation, the Board affirms this objective in a way that does not contravene the centrality objective of Flamborough's policy on the commercial structure of the Town.

The Board takes very seriously the site development concerns brought forward in the hearing related to pedestrian access, landscaping, lighting and garbage. The appropriateness of the commercial development, including the uses in question, and its compatibility with its surrounding environment depend on the issues raised being effectively addressed. On this matter, Mountainview Industrial Parks Limited is expected to fully meet its corporate responsibilities.

DECISION

The Board's decision takes the form of four interrelated parts.

1. The Board modifies the proposed amendment to the Official Plan by redesignating the lands located on the north side of Highway No. 5 and east of Burke Street, being part of Lot 4, Concession 3, Town of Flamborough, from Highway Commercial-Urban to Highway Commercial-Urban-Site Specific Area 1, in accordance with the attached Schedule B, which is a draft of Amendment No. 17 to the Official Plan for the Town of Flamborough, setting out in Part C four permitted uses: convenience retail store, office, personal services establishment, and restaurant, and the Board approves the same.
2. The Board allows an appeal by Mountainview Industrial Parks from a decision of the Niagara Escarpment Commission, whereby the Commission refused an application numbered W/C/89-90/243 for an increase to the list of permitted uses within an existing commercial plaza located on Lot 4, Concession 3, Town of Flamborough, provided that the permitted uses are limited to four uses: convenience retail store, office, personal services, and restaurant. On the issuance of a N.E.C. Development Permit these four uses will be identified as a condition, along with the standard conditions, of the permit.
3. Parts 1 and 2 are conditional on the following:
 - i) strict adherence of Mountainview Industrial Parks Limited to the Site Plan Agreement with the Town of Flamborough, and specifically the effective attention of Mountainview to the concerns identified in the Reasons for Decision with respect to landscaping, lighting and garbage;
 - ii) Mountainview entering into negotiations with Ontario Hydro with a view to obtaining an agreement (a) for the use of the Hydro right-of-way for the planting and maintenance of trees along the fence on the periphery of the eastern property line of the subject property; and (b) securing a 5-year renewable lease for the purpose of obtaining the right to construct a walkway within the Hydro corridor, from its intersection with Boulding Avenue on the north to Highway No.5 on the south, and;
 - iii) Mountainview undertaking the construction within the Hydro corridor of an all-weather walkway providing pedestrian access extending from Boulding Avenue to the subject site at Highway No. 5, in accordance with the specifications of the Town of Flamborough.

The Board may be spoken to concerning any administrative problems that may arise in the implementation of these conditions.

4. The Board should be advised in writing by the Town of Flamborough when and in what manner the Conditions of Part 3 have been met. The Conditions must be met to the Board's satisfaction. The Official Plan amendment specified in Part 1 shall not come into effect, nor shall the Niagara Escarpment Commission Development Permit be issued, until the requirements of Part 3 have been carried out.

DATED at TORONTO this 21st DAY of MAY, 1991

"R.D.M. Owen"

R.D.M. Owen
Chairman

"L.O. Gertler", FCIP

L.O. Gertler, FCIP
Member

EXHIBIT LIST

1. Document Book - Mountainview Industrial Parks Limited.
2. Curriculum Vitae of Richard Brady.
3. Official Plan Map with overlay, Town of Flamborough.
4. Existing Land Use Map with overlay, Town of Flamborough.
5. Niagara Escarpment Commission Map No. 2.
6. Former Town of Flamborough Zoning By-Laws No. 791, and No. 75-65-EF-Z, Air Photo and overlay.
7. Zoning By-Law No. 90-145-Z, Air Photo and overlay,.
8. Approved Site Plan, Mountainview.
9. Binder of Photographs - subject site and surrounding area.
10. Certified copy Official Plan - Town of Flamborough.
11. New Zoning By-Law 90-145-Z, Town of Flamborough.
12. Copy of Niagara Escarpment Commission Development Permit - re plaza, subject site.
13. Curriculum Vitae of Martin Kilian, Niagara Escarpment Commission.
14. Niagara Escarpment Commission Plan - Office Consolidation, January 12, 1991.
15. A, B, C and D - Letters from Alan Rutherford and Neighbours.
16. Market Opportunity Study, Stamm Economic Research.
17. Curriculum Vitae of Garry Stamm.
18. Map and Photos of existing Convenience Commercial Centre.
19. Dollar breakdown of DSTM/FCTM Sales Ontario 1989.
20. Curriculum Vitae of Peter J. De Iulio - Planner, Town of Flamborough.
21. Site Plan Agreement - (copy executed). Town of Flamborough and Con-Drain Company Limited (Mountainview).

AMENDMENT NO. 17

TO THE

OFFICIAL PLAN FOR THE

TOWN OF FLAMBOROUGH

This Amendment No. 17 to the Official Plan for the Town of Flamborough, which has been adopted by the Council of the Corporation of the Town of Flamborough, is hereby approved in accordance with Section 17 of the Planning Act, 1983, as Amendment No. 17 to the Official Plan for the Town of Flamborough.

Date

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COMPONENTS OF THIS AMENDMENT

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PART A: THE CERTIFICATION 3

- (1) Certificate of the Town of Flamborough
- (2) Adopting By-law of the Town of Flamborough

PART B: THE PREAMBLE 4

- (1) Purpose of this Amendment
- (2) Location of this Amendment
- (3) Basis of this Amendment

PART C: THE AMENDMENT 5

- (1) Introduction
- (2) General Land Use Plan Changes
- (3) Text Changes
- (4) Implementation
- (5) Interpretation

PART D: THE APPENDIX 6

Minutes of the Planning and Development Committee Meeting
held on March 13, 1989.

AMENDMENT NO. 17
TO THE OFFICIAL PLAN OF THE
TOWN OF FLAMBOROUGH

AN AMENDMENT TO THE
TOWN OF FLAMBOROUGH OFFICIAL PLAN

Prepared by
The Planning Department of the Corporation of
The Town of Flamborough
163 Dundas Street East, (Highway No. 5)
Waterdown, Ontario
LOR 2H0

AMENDMENT NO. 17
TO THE OFFICIAL PLAN OF THE
THE TOWN OF FLAMBOROUGH

PART A: THE CERTIFICATION

---"The enacting portion attesting the official status of the document".

PART B: THE PREAMBLE

---"An introduction to the Amendment and a summary of its background and basis". The Preamble does not constitute part of this Amendment.

PART C: THE AMENDMENT

---"The operative part of this document which amends the original Official Plan". The Amendment, consisting of the following text and map(s), constitutes Amendment No. 17 to the Official Plan of the Town of Flamborough.

PART D: THE APPENDIX

---"Minutes of the Planning and Development Committee Meeting held on March 13, 1989. The Appendix does not constitute part of this Amendment, it contains background data, planning considerations and public involvement associated with this Amendment.

2031.8

RECEIVED

RECEIVED

TO THE OFFICIAL FILE OF THE

TOWN OF FLEETBOROUGH

Document No. 17 to the Official File of the Town of Fleetborough
consisting of explanatory text and Schedule A, as prepared by the
Planning Department of the Town of Fleetborough, submitted to the
Council of the Corporation of Fleetborough by Resolution No.

PART A

in accordance with THE CERTIFICATION of the Planning Act, 1967,

---"The enacting portion attesting the official
status of the document".

The Corporation of the
Town of Fleetborough

The Corporation of the
Town of Fleetborough

PART A

THE CERTIFICATION

**AMENDMENT NO. 17
TO THE OFFICIAL PLAN OF THE
TOWN OF FLAMBOROUGH**

Amendment No. 17 to the Official Plan of the Town of Flamborough consisting of explanatory text and Schedule A was prepared by the Planning Department of the Town of Flamborough, adopted by the Council of the Corporation of the Town of Flamborough by By-law No. , in accordance with Section 17 of the Planning Act, 1983, on the day of , 1991.

CLERK

MAYOR

The Corporation of the
Town of Flamborough

The Corporation of the
Town of Flamborough

THE CORPORATION OF THE TOWN OF FLAMBOROUGH

BY-LAW NO. _____

BEING A BY-LAW TO ADOPT AMENDMENT NO. 17
TO THE OFFICIAL PLAN OF THE TOWN OF
FLAMBOROUGH.

The Council of the Corporation of the Town of Flamborough in
accordance with the provisions of The Planning Act, hereby
enacts as follows:

- (1) That the attached Amendment No. 17 to the Official
Plan of the Town of Flamborough consisting of the
attached maps and explanatory text is hereby
adopted.
- (2) That the Corporation of the Town of Flamborough make
application to the Regional Municipality of
Hamilton-Wentworth for approval of said Amendment
No. 17 to the Official Plan of the Town of
Flamborough.
- (3) That the Mayor and Clerk be and they are hereby
authorized and empowered to execute the said
Amendment No. 17 to the Official Plan of the Town
of Flamborough on behalf of this Corporation and to
affix thereto the Corporate Seal and to make or
cause to be made on behalf of this Corporation such
application as may be necessary for approval of said
Amendment No. 17 to the Official Plan of the Town
of Flamborough and to execute under the Corporate
Seal such documents as may be required for the above
purposes.
- (4) This By-law shall come into force and take effect
on the day of the final passing thereof.

READ A FIRST AND SECOND TIME THIS _____ DAY OF _____
, 1991.

CLERK

MAYOR

READ A THIRD TIME THIS _____ DAY OF _____, 1991 AND
ADOPTED BY A VOTE OF _____ TO _____ IN A NINE (9) MEMBER
COUNCIL.

CLERK

MAYOR

THE TOWN OF FLAMBOROUGH

(1) PURPOSE OF THE AMENDMENT

The purpose of this Amendment is to designate certain lands as particularly suitable for use as a school site. This Amendment is a part of the Comprehensive Zoning Ordinance of the Town of Flamborough, New Hampshire.

(2) LOCATION OF THE AMENDMENT

Schedule A, attached hereto and forming part of this Amendment, shows the location of the lands affected by this Amendment, which are:

Block C, Plan 1-155, formerly in the Township of East Flamborough, now in the Town of Flamborough.

PART B

THE PREAMBLE

(1) PURPOSE OF THE AMENDMENT

---"An introduction to the Amendment and a summary of its background and basis."

THIS IS A CERTIFICATE OF THE TOWN OF FLAMBOROUGH, NEW HAMPSHIRE, TO THE EFFECT THAT THE TOWN OF FLAMBOROUGH HAS ADOPTED THE TOWN OF FLAMBOROUGH ZONING ORDINANCE, AS AMENDED, AND THAT THE TOWN OF FLAMBOROUGH HAS ADOPTED THE TOWN OF FLAMBOROUGH ZONING MAP, AS AMENDED.

TOWN OF FLAMBOROUGH

Block C, Plan 1-155, formerly in the Township of East Flamborough, now in the Town of Flamborough.



PART B

THE PREAMBLE

(1) PURPOSE OF THIS AMENDMENT:

The purpose of this Amendment is to redesignate certain lands more particularly described by Item 2 below and Schedule 'A' to this Amendment from Highway Commercial-Urban to Highway Commercial-Urban-Site Specific Area #1.

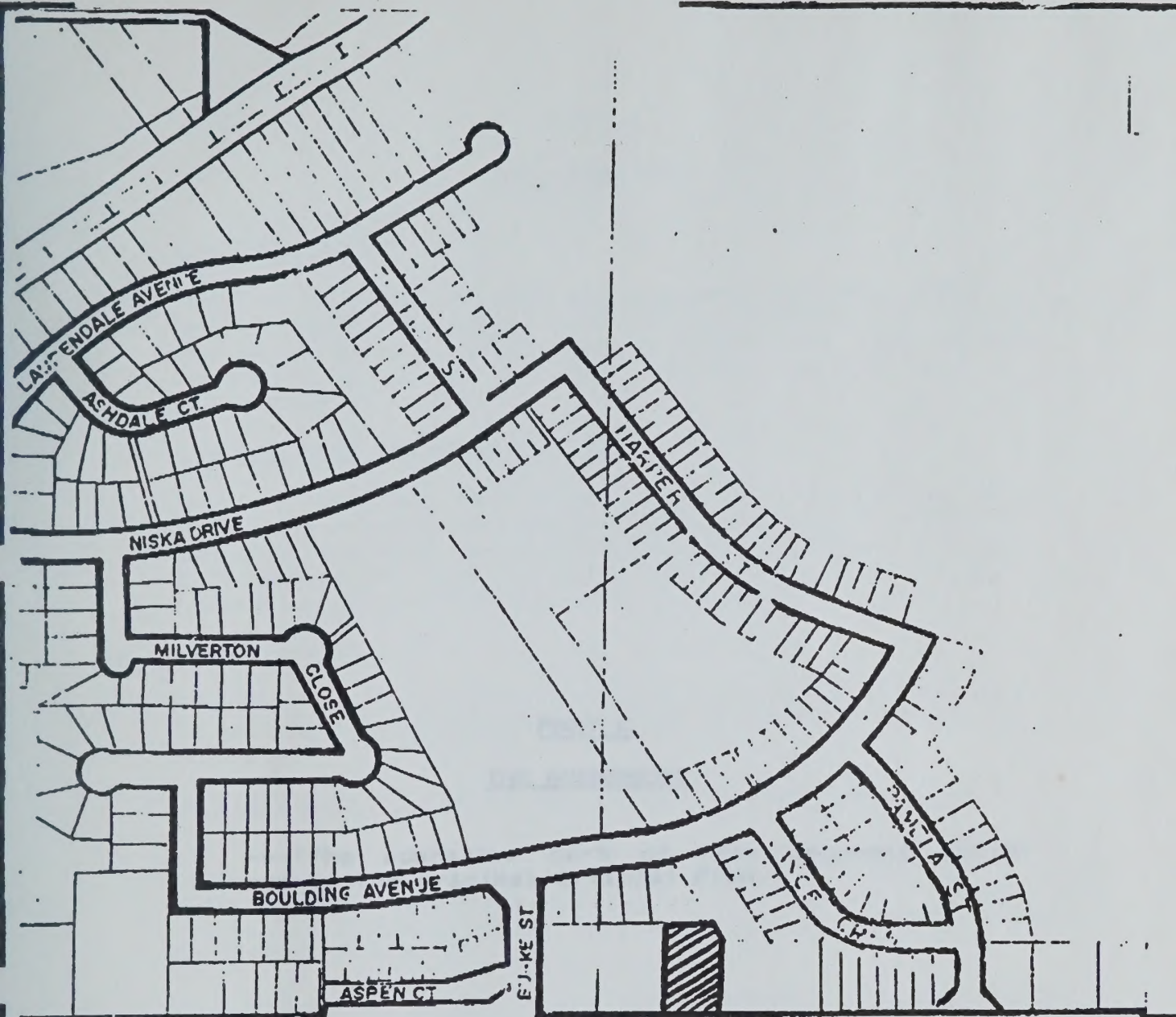
(2) LOCATION OF THE AMENDMENT:

Schedule "A" attached hereto and forming part of this Amendment, shows the location of the lands affected by this Amendment, which are:

Block C, Plan M-165, formerly in the Township of East Flamborough, now in the Town of Flamborough.

(3) BASIS OF THIS AMENDMENT:

The Town of Flamborough Official Plan designates the subject property Highway Commercial-Urban. However, the applicant deems it desirable and expedient to amend the Official Plan in order to establish four site specific uses on the property.



THIS IS SCHEDULE 'A'
TO AMENDMENT NO. 17
TO THE OFFICIAL PLAN
FOR THE TOWN OF FLAM-
BOROUGH SHOWING THE
LOCATION OF THE AMEND-
MENT

TOWN OF FLAMBOROUGH

BLOCK C, PLAN M-165
FORMERLY IN THE TOWNSHIP OF
EAST FLAMBOROUGH, NOW IN THE
TOWN OF FLAMBOROUGH



SUBJECT PROPERTY

APPLICANT: Mountainview Industrial Parks Ltd.
APPLICATION No.: 40.40.38

PART I

RE. AMENDMENT

(1) INTRODUCTION

The whole of this part of the document entitled "PART I, THE AMENDMENT" which contains all the following text and the attached map, designated Schedule "A" constitutes Amendment No. 17 to the Official Plan of the Town of Fishborough.

(2) PURPOSE, SCOPE AND PLAN DESIGN

The Map Attached hereto and designated Schedule "B", which shows Urban Area Land Use Plan is hereby amended by changing the land use designation of the lands situated on Schedule "A" from Highway Commercial-Urban to Highway Commercial-Urban-Site Specific Code 15.

(3) TEXT AMENDMENT

The Town of Fishborough Official Plan is hereby amended by adding the following text at the end of Section 4.3.2.1:

PART C

THE AMENDMENT

4.3.2.1 HIGHWAY COMMERCIAL-URBAN-SITE SPECIFIC CODE 15

---"The operative part of this document which amends the original Official Plan."

4.3.2.2 The lands shown on Schedule "A" as Highway Commercial-Urban-Site Specific Code 15 shall be permitted to use for a convenience retail store, office, personal services establishment and restaurant only.

(4) IMPLEMENTATION

This Amendment will be implemented through the municipal planning department development permit application process.

(5) AMENDMENT

The provisions of Part II, the Plan, Section 2.12 of the Official Plan shall apply in regard to this Amendment.

PART C

THE AMENDMENT

(1) INTRODUCTION:

The Whole of this part of the document entitled "PART B, THE AMENDMENT" which consists of the following text and the attached map, designated Schedule "A" constitutes Amendment No. 17 to the Official Plan of the Town of Flamborough.

(2) GENERAL LAND USE PLAN CHANGES:

The Map attached hereto and designated Schedule "A", Waterdown Urban Area Land Use Plan is hereby amended by changing the land use designation of the lands outlined on Schedule "A" from Highway Commercial-Urban to Highway Commercial-Urban-Site Specific Area #1.

(3) TEXT CHANGES:

The Town of Flamborough Official Plan is hereby amended by adding the following paragraph at the end of Section A.3.3.6:

A.3.3.7 HIGHWAY COMMERCIAL-URBAN-SITE SPECIFIC AREAS

It is the intent of Council to account for special circumstances affecting specific sites throughout the Town by providing detailed policy guidance. In this regard, the following policies apply to these HIGHWAY COMMERCIAL-URBAN-SITE SPECIFIC AREAS:

A.3.3.7.1 The lands shown on Schedule "A" as Highway Commercial-Urban-Site Specific Area #1 shall be permitted to be used for a convenience retail store, office, personal services establishment and restaurant only.

(4) IMPLEMENTATION:

This Amendment will be implemented through the appropriate Niagara Escarpment Commission Development Permit Application process.

(5) INTERPRETATION:

The provisions of PART II: THE PLAN, Section F.12 of the Official Plan shall apply in regard to this Amendment.

PART D
THE APPENDIX

**---"Minutes of the Planning and Development
Committee Meeting"**

(1) Mr. Todd Shopp, Director of the Transportation Planning Committee

Mr. Todd Shopp, Director of the Transportation Planning Committee, opened the meeting by welcoming everyone and stating that the purpose of the meeting was to discuss the progress of the Transportation Planning Committee's work. He then presented a report on the work of the committee since the last meeting.

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4. That, if the Province of Ontario has not finalized any Legislation on or before July 31st, 1989, the Chief Administrative Officer will prepare a further report and recommendation to Town Council and relative to the various recommendations, and effective dates, if deemed necessary.
5. That the Director of Finance review the time of collection of lot levies and time period required, as it affects building permit applications, and report back any concerns or recommendations to council on or before April 24, 1989.

Carried

(3) Mr. Todd Sheppard re Cancellation of Entrance Permit

Mr. Todd Sheppard, Manager of the Flamborough Golf course asked for clarification of why the Ministry of Transportation had revoked the access permit onto Highway 52 that they had previously issued in January of this year. He explained that it was his understanding that comments from the Town had influenced the Ministry of Transportation's decision.

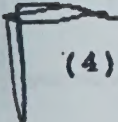
Mr. Paparella told the Committee that as he understood the situation, the Burlington Ministry of Transportation office had issued the access permit in January. The golf course zoning application was sent to the Toronto Ministry of Transportation offices as usual and it was upon review of this application, that the Toronto office advised the Burlington office to revoke the access permit. Mr. Paparella added that Planning Staff feel that it is more appropriate for the proposed residence (which is accessory to the principle use) to be situated off of the existing driveway into the golf course. Providing a separate access off of Highway 52 could lead to a future severance situation.

Mayor Robb said that he has no problem with the golf course having an access off of Highway 52 stating that the Town shouldn't try to preconclude what might happen in the future regarding severances.

Moved by Mayor Robb
Seconded by Councillor Morrison

That the Town does not object to a private entrance off of Highway 52 and recommends that the Ministry of Transportation issue the appropriate access permit to Flamborough Hills Golf Course.

Carried

- 
- (4) Mr. Edward M. Mizzi, Mr. Lloyd A. Rutherford, Carole and Dave Webb and Michael and Leslie Greene re Con-Drain Ltd. Site Plan Agreement

(See also Addendum DPD 1989-40)

Mr. Edward Mizzi representing area residents sited a number of concerns his neighbours have with Con Drain's adherence to their site plan agreement. Mr. Mizzi noted in particular;

- (4) Mr. Edward M. Mizzi, Mr. Lloyd A. Rutherford, Carole and Dave Webb and Michael and Leslie Greene re Con-Drain Ltd. Site Plan Agreement Continued

1. The lack of a 3 metre border, with trees on the easterly border, of the plaza.
2. The very bright and misdirected lighting in the plaza.
3. The fence height discrepancy (slightly lower than it should be).

Mr. Mizzi also noted that the developer has applied to change the designation on the Plaza property from Highway Commercial to Urban Commercial. He requested that discussion of this matter, listed in the agenda addendum be brought forward. The Committee agreed to this request. Mr. Mizzi said that the area residents do not want the personal service, convenience type businesses in the plaza which would be permitted under the Urban Commercial designation. He asked that Council support Planning staffs recommendation to deny the application to amend the Official Plan and that the conditions of the site plan agreement be enforced.

With regard to the site plan agreement, Mr. Paparella said that he had spoken to the developer and was assured that trees will be planted in the spring. He agreed that the lighting needs to be corrected and the Town Engineer said he would try to arrange a site meeting for Wednesday regarding this.

Mr. John Rodey of Mountainview Homes, addressed their Official Plan Amendment application, saying that the leasing inquiries that they have received are related to personal service, neighbourhood oriented business rather than tourist oriented.

Mr. Paparella said that there are locational and access concerns related to the proposed change in uses and as a result staff cannot support the application.

Moved by Councillor Leader
Seconded by Councillor Shurvin

That the Town of Flamborough not support this application.

Carried

- (5) Mr. D. Logan re N.E.C.D.P.A. W/I/88-89/143 (DeFelice)
(Also, See Item #17)

Mr. Donald Logan, representing Mr. Dominic DeFelice requested that the Town reconsider the previous Councils negative recommendation regarding his clients Niagara Escarpment Commission Development Permit application. He stated that in his opinion there are two benefits to permitting the autobody business owned by Mr. DeFelice to relocate to the property currently used by Bennetts Towing. Firstly, he said the change of use would clean up the Clappison Corners site as

CA20NCH 91C08
Ontario. Consolidated Hearings Act, 19
CH-90-08
DECISION AND REASONS FOR DECISION...IN
APPEAL BY MOUNTAIN INDUSTRIAL PARKS...

**RESOURCE CENTRE
INST. FOR ENVIRON'L. STUDIES
UNIVERSITY OF TORONTO**



